

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

CC:PA:01:MEHara  
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to: Jo Ann Lacey  
FSLG Program Analyst  
Fed-State & Local Govt  
(Tax Exempt and Gov't Entities)  
T:GE:FSL

from: Blaise Dusenberry  
Senior Technician Reviewer, Branch 1  
(Procedure & Administration)  
CC:PA:1

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subject: Form 8300 Requirements

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

#### ISSUES

ISSUE 1. Whether governmental units are exempt from reporting under I.R.C. § 6050I?

ISSUE 2. Whether instrumentalities of government are exempt from reporting under I.R.C. § 6050I?

#### SHORT CONCLUSIONS

ISSUE 1. Governmental units are exempt from reporting under I.R.C. § 6050I. However, for purposes of determining the exclusion from reporting on the Form 8300 under I.R.C. § 6050I, the term “governmental unit” is interpreted to mean only the United States government, states, political subdivisions of states, and integral parts of states and political subdivisions of states.

ISSUE 2. The exclusion from reporting under I.R.C. § 6050I by filing Form 8300 for “governmental units” does not extend to instrumentalities of government. Instrumentalities of government fall within the definition of “persons” which is defined very broadly for purposes of reporting under I.R.C. § 6050I to include an individual, a trust, estate, partnership, association, company or corporation.<sup>1</sup>

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1. I.R.C. § 7701(a)(1), Treas. Reg. § 1.6050I(a)(1)(i).

## BACKGROUND

Under I.R.C. § 6050I, a person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in one transaction (or two or more related transactions), must file an informational return with the Internal Revenue Service (Service)<sup>2</sup>, and furnish the payor with a statement.<sup>3</sup> Enacted as part of the Tax Reform Act of 1984, Congress imposed the reporting requirement in I.R.C. § 6050I to assist the Service in discovering unreported income (e.g., in connection with illegal activities) by identifying taxpayers with large incomes.<sup>4</sup> The Violent Crime Control and Law Enforcement Act of 1994<sup>5</sup> added section 6050I(g) which applied the reporting requirements of section 6050I to cash received by criminal court clerks.<sup>6</sup> A report required by I.R.C. § 6050I and 31 U.S.C. § 5331 must be made on a Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*.<sup>7</sup>

## DISCUSSION

ISSUE 1. Whether governmental units are exempt from reporting under I.R.C. § 6050I?

With certain exceptions, reporting is required under I.R.C. § 6050I by “any ‘person’ (as defined in section 7701(a)(1)) who, in the course of a trade or business in which such person is engaged receives cash in excess of \$10,000 in one transaction (or two or more related transactions).” See Treas. Reg. § 1.6050I-1(a). I.R.C. § 7701(a)(1) provides that: “[w]hen used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, ... the term person shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.”<sup>8</sup>

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2. Treas. Reg. § 1.6050I-1(a)(1)(i).

3. See also Treas. Reg. § 1.6050I-1(f)(1).

4. S. Rept. No. 98-169, at 429 (1984).

5. Section 20415(a), P.L. No. 103-322.

6. In 2001, Congress enacted the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act) which added nearly all the language of I.R.C. § 6050I as 31 U.S.C. § 5331 to the Bank Secrecy Act (BSA). Section 365, P.L. No. 107-56. Section 5331 applies the reporting requirements to nonfinancial trades or businesses.

7. Treas. Reg. § 1.6050I-1((e)(2).

8. I.R.C. § 7701(a)(1), Treas. Reg. § 1.6050I-1(a)(1)(i). The term “person” is not statutorily defined the same way under the Internal Revenue Code and the Bank Secrecy Act, but the Bank Secrecy Act regulations explicitly bring them into conformity using the definition of person under I.R.C. § 7701. By contrast, 31 U.S.C. § 5312(a)(5) provides that the term person “in addition to its meaning under section 1 of title 1, includes a trustee, a representative of an estate and, when the Secretary prescribes, a governmental entity. 1 U.S.C. § 1 states that the term person “include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.” Implementing BSA regulations provide that for purpose of 31 U.S.C. § 5331, the term “person” shall have the same meaning as under 26 U.S.C. 7701(a)(1). 31 CFR § 101.330(a)(1).

In keeping with the prefatory language of I.R.C. § 7701(a)(1), the definition of the term “person” may vary according to the specific Internal Revenue Code section involved and the objective of that section. Consequently, in defining the “persons” that fall under the reporting requirement of I.R.C. § 6050I, it is important to ascertain Congressional intent in enacting that Code section. As appropriate in every case which turns on statutory construction, we begin with the language of the statute.<sup>9</sup>

In determining whether governmental units are “persons” subject to the reporting requirements of I.R.C. § 6050I, we note that the list of entities in I.R.C. § 7701(a)(1) does not include governmental units. However, the list of entities explicitly included in section 7701(a)(1) cannot be construed as exhaustive, and its failure to specifically list governmental units is not determinative of whether such entities are “persons” with respect to particular Internal Revenue Code sections. According to section 7701(c), “the terms ‘includes’ and ‘including’ when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.” See I.R.C. § 7701(c), *In re Joplin*, 882 F.2d 1507, 1511 (10<sup>th</sup> Cir. 1989). Thus, we look to section 6050I and its objective to determine whether “governmental units” should be considered to be persons for purposes of the Form 8300 reporting requirements. We note that I.R.C. § 6050I(g) specifically subjects criminal court clerks to the filing requirements. If governmental units were not already excluded from the reporting requirements, I.R.C. § 6050I(g)’s provision subjecting criminal court clerks to the Form 8300 reporting requirement would not be necessary. This view that governmental units are exempt from the reporting requirements of I.R.C. § 6050I(g) is buttressed by the fact that the term “governmental units” is not included in the language of Section 6050I, while the term “governmental units”, by contrast, is included in other Internal Revenue Code information reporting sections, see, e.g., I.R.C. §§ 6041A,<sup>10</sup> 6045,<sup>11</sup> 6049,<sup>12</sup> 6050H,<sup>13</sup> 6050J,<sup>14</sup> and 6050S.<sup>15</sup> Intent can be expressed by omission

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9. *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 756 (1975); *United States v. Jackson*, 759 F.2d 342, 344 (4<sup>th</sup> Cir. 1985).

10. I.R.C. § 6041A(d)(1), entitled Applications to governmental units, provides:

(1) Treated as persons.--The term “person” includes any governmental unit (and any agency or instrumentality thereof).

11. I.R.C. § 6045(c)(4) provides:

(c) Definitions For purposes of this section - . . . (4) Person The term "person" includes any governmental unit and any agency or instrumentality thereof.

12. I.R.C. § 6049(d), entitled “Definitions and special rules” provides:

For purposes of this section— (1) Person

The term “person” includes any governmental unit and any agency or instrumentality thereof and any international organization and any agency or instrumentality thereof.

13. I.R.C. § 6050H(c), entitled “entitled “Applications to governmental units”, provides:

For purposes of this subsection(a) —(1) Treated as persons.

The term “person” includes any governmental unit (and any agency or instrumentality thereof).

14. I.R.C. § 6050J(d), entitled “Applications to governmental units”, provides:

For purposes of this section—(1) Treated as persons

The term “person” includes any governmental unit (and any agency or instrumentality thereof).

15. I.R.C. § 6050S(c), entitled “Application to governmental units”, provides

For purposes of this section--

(1) a governmental unit or any agency or instrumentality thereof shall be treated as a person, and

as well as inclusion of language.<sup>16</sup> The fact that Congress left governmental units out of the definition of person in Section 6050I, yet included it in other information reporting Code sections, implies that omission should be understood here as an exclusion.<sup>17</sup> Therefore, we conclude that governmental units are exempt from the reporting requirements under I.R.C. § 6050I.

### Definition of governmental units

Although governmental units are not included in the “persons” subject to the information reporting requirements under I.R.C. § 6050I, what constitutes a “governmental unit” for purposes of this conclusion warrants further discussion as the term is not used or defined in I.R.C. § 6050I or the implementing regulations. It is clear, however, that Congress enacted section 6050I because of concern over lost tax revenue due to the underreporting of income by identifying taxpayers with large incomes.<sup>18</sup> In construing the meaning of a statute, courts must consider the history of the subject matter involved, the end to be obtained, the mischief to be remedied and the purpose to be accomplished.<sup>19</sup> In keeping with the Congressional objective to reduce tax revenue lost through underreporting of income, and the placing of the Code provision within the information reporting subpart of the Code,<sup>20</sup> we believe that the term “person” should generally be construed broadly and the exclusion of “governmental units” (as discussed above) should be construed narrowly, to maximize the reporting under Section 6050I.

Accordingly, it is our view the term “governmental unit” for purposes of determining the exclusion from reporting on the Form 8300 under Section 6050I should be interpreted as including only the United States government, states, political subdivisions of states, integral parts of states, and integral parts of political subdivisions of states and not including instrumentalities of government, as discussed below.

Regulation section 1.103-1(b) defines a “political subdivision” as either a municipal corporation, or a division of government that has been delegated the right to exercise

(2) any return required under subsection (a) by such governmental entity shall be made by the officer or employee appropriately designated for the purpose of making such return.

16. Singer & Singer, 2A STATUTES AND STATUTORY CONSTRUCTION, § 45:5 at 36 (7<sup>th</sup> ed. 2007); citing *Universal Const. Co., Inc. v. Occupational Safety and Health Review Commission*, 182 F.3d 726, 729 (10<sup>th</sup> Cir. 1999).

17. It is a canon of statutory construction that the inclusion of certain provisions implies the exclusion of others. The doctrine of *inclusio unius est exclusio alterius* “informs a court to exclude from operation those items not included in a list of elements that are given effect expressly by the statutory language.” *In re TMI*, 67 F.3d 1119, 1123 (3d Cir.1995) (quoting *Williams v. Wohlgermuth*, 540 F.2d 163, 169 (3d Cir.1976); see also Singer & Singer, 2A STATUTES AND STATUTORY CONSTRUCTION, § 46:23 at 398 (7<sup>th</sup> ed. 2007).

18. Joint Committee on Taxation Staff, *General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984*, 98<sup>th</sup> Cong. at 491 (1984) (“Congress was concerned that approximately 80 percent of the revenue lost through noncompliance is attributable to the underreporting of income.”)

19. Singer & Singer, 2A STATUTES AND STATUTORY CONSTRUCTION, § 45:5 at 36 (7<sup>th</sup> ed. 2007).

20. Section 6050I is within subpart B of part III of subchapter A of chapter 61 of Title 26 (sections 6041 through 6050W).

part of the government's sovereign power. For example, a city or county that has substantial sovereign power is a political subdivision of a state. There are three generally acknowledged sovereign powers: the power to tax, the power of eminent domain, and the police power. A municipal corporation or a division of government is a "political subdivision" only if it has a substantial sovereign power. It need not have all three sovereign powers, but possessing only an insubstantial amount of any or all of the sovereign powers is insufficient. See Rev. Rul. 77-165, 1977-1 C.B. 21.

In determining whether an entity is an integral part of a state, it is necessary to consider all of the facts and circumstances, including the state's degree of control over the entity and the state's financial commitment to the entity. Rev. Rul. 87-2, 1987-1 C.B. 18, holds that a trust fund created by a State supreme court to hold amounts advanced to lawyers in the State by their clients is an integral part of the State and not subject to tax. In arriving at this holding, the ruling reasons that the State court's creation of the fund and its ability to select and remove the fund's governing body, to control the fund's investments and expenditures, to monitor the fund's daily operation, and to abolish the fund indicate that the fund is not an independent entity, but rather is an integral part of the State. Regulation section 301.7701-1(a)(3) provides that "an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the state."<sup>21</sup>

ISSUE 2. Whether instrumentalities of government are exempt from reporting under I.R.C. § 6050I?

In keeping with Congressional intent to maximize information reporting to address underreporting of income, as noted above, it is our view that the exclusion from the requirements of I.R.C. § 6050I for "governmental units" does not extend to "instrumentalities of government." Rather, it is our view that the term "persons" in section 6050I should be interpreted to include governmental instrumentalities.

Whether an entity is an instrumentality of government is determined based on the following factors: (1) whether it is used for a governmental purpose and performs a governmental function; (2) whether it performs its function on behalf of one or more states or political subdivisions; (3) whether private interests are involved, or whether states or political subdivisions have the powers and interests of an owner; (4) whether control and supervision of the organization is vested in public authority or authorities; (5) whether express or implied statutory or other authority is needed to create and/or use the entity; and (6) the degree of the organization's financial autonomy and the source of its operating expenses. See Rev. Rul. 57-128, 1957-1C.B. 311.

As noted above, the term person is defined broadly in section 7701(a)(1) to include an individual, a trust, estate, partnership, association, company or corporation."<sup>22</sup> Many

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21. We note that providing criteria for treating an entity as an integral part of a state, local, or tribal government is on the IRS' priority guidance plan.

22. I.R.C. § 7701(a)(1).

governmental instrumentalities are corporations and would be therefore fall within the definition of "person" in section 7701(a)(1), incorporated by Treas. Reg. § 1.60501-1(a)(1)(i).<sup>23</sup> Other government instrumentalities that are not corporations may also be required to report under I.R.C. § 6050I because they fall under the section 7701(a)(1) definition of "persons" as a trust, estate, partnership, association or company. However, as noted above, the list of entities contained in section 7701(a)(1) cannot be construed as exhaustive, and its failure to specifically list particular types of organizations is not determinative of whether such entities are "persons." See *In re Joplin*, 882 F.2d 1507, 1511 (10<sup>th</sup> Cir. 1989). Thus, we conclude that instrumentalities of government, although not included within the list of entities specifically enumerated in section 7701, are "persons" subject to the reporting requirements in section 6050I. This is in keeping with Congressional intent to maximize the reporting under Section 6050I.

Consistent with the above conclusions, state colleges and universities may or may not be required under I.R.C. § 6050I to report cash payments, in excess of \$10,000, including tuition payments, depending upon whether they meet the definition of governmental unit for purposes of section 6050I. We also note that many state universities are organized as corporations under I.R.C. § 501(c)(3).<sup>24</sup> Under section 7701(a)(1), such corporations are explicitly included in the definition of persons and, as noted above, the regulations under section 6050I provide that this definition of "person" determines which entities are subject to the reporting requirements under I.R.C. § 6050I.<sup>25</sup>

We have coordinated this response with Chief Counsel (Tax Exempt and Government Entities). Please contact Michael Hara, CC:PA:1, at (202) 317-6845, if you have any questions or comments regarding this memorandum.

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23. See Priv. Ltr. Rul. 87-02-030 (Oct. 8, 1986)(corporations that are governmental instrumentalities are subject to the Form 8300 filing requirement).

24. Reporting is required under I.R.C. § 6050I by any person who receives more than \$10,000 in one or more transactions who is "engaged in a trade or business." Notice 90-61, 1990-2 C.B. 347, provides that "trade or business" under section 6050I has the same meaning as it does under section 162 and refers to any activity constituting the sale of goods or the performance of services to produce income." Notice 90-61, therefore, broadly defines the term trade or business, only excluding from the I.R.C. § 6050I reporting requirement charitable cash contributions in excess of \$10,000, by reasoning that "[t]he determination that an activity is not subject to tax under the unrelated trade or business taxable income provisions . . . does not control whether the activity constitutes a 'trade or business' within the meaning of section 162."

25. Treas. Reg. § 1.60501-1(a)(1)(i).